

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.14926 OF 2017

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

“to issue a writ of Mandamus or any other appropriate writ, order or direction, declaring, the action of the respondents herein, in trying to construct the office building of Padamara Vipparru, West Vipparru Gram Panchayath in Pentapadu Mandal, West Godavri District, in the vacant site where the previous Gram Panchayath Building was situated, against the interest of Gram Panchayath and the villagers, in breach of the guidelines issued by the Govt. with regard to construction of Panchayath Office Buildings and also Contrary to the settled legal position by encroaching a part of the tank land, as illegal, arbitrary, without jurisdiction and contrary to the provisions of A.P Panchayath Raj Act, 1994 and further direct the respondents herein, to allow the petitioner herein to construct the Grama Panchayath Office Building, in the existing building (Library building) where the Grama Panchayath Office is running for the last several years strictly in accordance with the provisions A.P.Panchayath Raj Act, 1994 and the Rules framed there under and pass such other order or orders as may be just and necessary.”

2. Heard learned counsel for the petitioner and also the learned Government Pleader for Panchayat Raj, representing

the respondents 1 to 6 and the learned Standing counsel, Sri Ravi Cheemalapati, for the respondents 7 and 8 and perused the prayer in the writ petition with supporting affidavit and the counter affidavits of 3rd respondent – District Panchayat Officer and 8th respondent – Panchayat Secretary respectively and also the reply affidavit of the petitioner and perused the material on record including the resolution Item No.39 of the 8th respondent – Panchayat, dated 22.08.2016, approved in relation to the construction of the panchayat building in R.S.No.571/1, either in 10 cents or part of 10 cents, as the case may be, to construct in the place of the earlier existing for more than 70 years old dilapidated building of the site therein. It is needless to observe that this Court, while disposing of the implead petition of the third parties to come on record, vide W.P.M.P.No.22915 of 2017, dated 29.06.2017, in support of the counter affidavit averments of the 8th respondent, made an observation to read their implead petition affidavit also together with the counter affidavit of the 8th respondent.

3. According to the very prayer in the writ petition filed by the panchayat, claiming as represented by its Sarpanch, Dokala Nageswara Rao, that the action of the respondents in trying to construct the panchayat office building in the said site of erstwhile panchayat building, that was existing since crumbled, is in breach of the guidelines of the government

and against interest of panchayat and by encroachment of part of the tank land and to direct the respondents to allow the petitioner to construct panchayat office building in the existing library building, where the panchayat office is presently running for past several years, as per the Act and the Rules.

4. The writ petition was filed in the end of April 2017, but for whispered in para 4 of the reply affidavit at the fag end of the arguments by seeking time, today by the petitioner of he is prepared to give five hundred square yards of site and bear the expenditure already incurred for the foundation laid in the existing proposed construction building, there was no such whisper either in the writ petition affidavit or anywhere so far. Though it was the argument advanced earlier including from the writ petition affidavit averments of disputing the very resolution and the signature of him, in the reply affidavit, he conceded about his signature which itself discloses there is a resolution. Then it is to decide whether he can wriggle out or not.

5. From the above background, before coming to the further facts on the aspect of very maintainability of the writ petition raised by the learned counsel for the respondents 7 and 8 and the learned Government Pleader as it is a gram panchayat site and the proposed construction is to the benefit of the entire village, even any person of the panchayat as a

person interested can maintain and practically the locus cannot be questioned when maintained by the Sarpanch of the panchayat but for to decide on facts when he was party to the resolution to construct the building in the site can wriggle out or not, and from the expression of the three judge bench judgment of the Apex Court in **Kalyan Singh Vs. Smt.Chhoti and others**¹, it is clear that a person having interested in any public site or communal site or community property, to protect such property or interest of the persons of the area can maintain a suit and need not even file such a suit under Order 1 Rule 8 of C.P.C. in a representative capacity. Thus, from that analogy, the writ petition is maintainable.

6. Even coming to the other aspect on the disputed questions of fact and maintainability of writ petition, referring to catena of expressions, the larger bench in **Bhamidipati Annapoorna Bhavani Vs. Land Acquisition Officer, Yeleru Reservoir Project**,² held very clearly that mere involvement of disputed questions of fact raised by any of the parties itself is not a ground, so also of any equally efficacious remedy alternatively available for the fact that the discretionary power of the High Court under Article 226 has no limits to exercise, however, such power is to be exercised along recognised lines and not in an arbitrary way but in a judicious manner.

¹ AIR 1999 SC 397

² 2005 (2) ALT 786

7. Having regard to the above, the contentions because of involvement of disputed questions of fact or either under Section 256 or 264 of the Panchayat Raj Act, remedy of revision lies with the Government if at all is also not a ground to impugn the maintainability.

8. Accordingly, it can be held safely and thereby holding that the writ petition is maintainable, but for to decide how far to dwell into the questions of fact in considering on the factual matrix and as to this Court in the administrative prerogative of a policy decision taken by the authorities howfar can interfere also with reference to the expression of the Apex Court in ***J.R.Ragopathy Vs. State of Andhra Pradesh and others***³.

9. One of the disputed questions of fact in the writ petition is the site where the construction going on and stopped at the foundation level from the interim order of the court is whether existing in 10 cents or not. Irrespective of the extent, the fact that for the past 70 years there used to be a panchayat building therein where the panchayat was running is not only reflecting by the panchayat resolution but also the writ petition affidavit averments. Once that when cannot be disputed, it is difficult to allow any contention of the petitioner-Sarpanch of the panchayat of not to permit the construction in saying the site is not sufficient or even to

³ AIR 1998 SC 1681

consider the prayer of any direction to demolish the existing library building where the panchayat office presently situate and to construct therein panchayat office building that too when there is no material furnished for the said prayer by the writ petitioner of what is the extent of the existing library building that was donated by a private person to the panchayat for running a library and its condition and any need to demolish the building and allow a panchayat office building to construct therein that too the ongoing construction is when supported by a resolution of the panchayat unanimously, to which the Sarpanch of the Panchayat who maintained writ petition was a party and based on which the sanction was accorded by the authorities in considering its viability. It is also in view of the limitation on interference by this Court with such policy decision arrived, as laid down in J.R.Raghupathy Supra, this Court is not considering any of the prayers in the writ petition as tenable though there is no principle of estoppel that apply in the facts.

10. It is also needless to say, once the construction covered by the panchayat resolution started, let the construction shall go on instead of allowing to conduct a rowing enquiry by this writ court into the disputed questions of fact as if at all it is not suitable ultimately, it is for the panchayat by passing an unanimous resolution, subsequently after construction, to

locate the library in the new building under construction and continue the existing panchayat office in said library building.

11. Having regard to the above and with these observations, this writ petition can be disposed of, but for if at all to give liberty to the petitioner in view of his last version of the say in the reply affidavit of today that he is prepared to donate five hundred square yards of site in the middle of the village and also incur the expenditure incurred by the Government for the foundation level, for constructing a panchayat building in such a site he wants to donate to serve the larger interest of the persons of the village, such a representation of him is left open within one week from the date of receipt of a copy of this order to make to the respondents 1 to 3 of the writ petition, i.e., the Government, represented by Principal Secretary, District Collector and District Panchayat Officer, for them to consider if at all more particularly by keeping in view the Section 265 of the Panchayat Raj Act, which says when there is a possibility of considering a larger extent of site going to be given to the panchayat for the future purposes, there need not be a construction in the existing site if it is not sufficient and such a loss can be averted by the authorities by virtue of the provision. However the above observation no way interdicts the ongoing construction since the interim order to stop further construction is vacated to proceed forthwith unless the authorities take any other decision from any

representation of petitioner referred supra. It is also made clear that the interim direction not to lapse the funds holds good.

12. Accordingly and with the above direction, this writ petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

03.07.2017

L.R. copy to be marked -- YES

*Note: issue C.C. by tomorrow.
B/o. SS*

